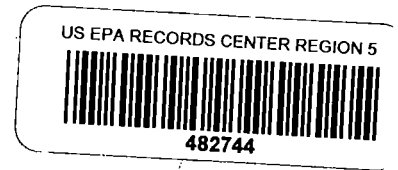




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September 20, 2007

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Re: *United States v. Bayer Healthcare LLC et al.* 2:07cv304

Dear Counsel:

Pursuant to paragraph 117 of the proposed Consent Decree in the captioned case, attached please find an Amended Complaint above-captioned cause. The only change from the State's initial Complaint is the addition of Consolidated Rail Corporation and Conrail, Inc. to correct the caption of the case as originally filed.

As you know, no response to the Complaint in Intervention is necessary on behalf of any of your clients unless the Court declines to enter the proposed Consent Decree. Please call me at (317)232-6290 if there are questions on this or any related matter.

Sincerely,


Valerie Tachtiris
Deputy Attorney General

Copies: Larry Johnson
Wayne Ault
Merriam Cheslin
A. Gayle Jordan

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF INDIANA,

Plaintiff-Intervenor,

v.

BAYER HEALTHCARE, LLC; HIMCO WASTE-
AWAY SERVICE, INC.; AACOA INC.; ACCRA-PAC,
INC.; AMERICAN GAGE AND MACHINE COMPANY;
AMERICAN PREMIER UNDERWRITERS, INC.;
BEAZER EAST, INC.; BRIDGESTONE FIRESTONE
NORTH AMERICAN TIRE, LLC; CHAMPION HOME
BUILDERS CO.; COLEMAN CABLE, INC; CROSBIE
FOUNDRY COMPANY, INC.; CONSOLIDATED
RAIL CORPORATION; CONRAIL, INC.; CTS
CORPORATION;
DURA AUTOMOTIVE SYSTEMS, INC.; E.K. BLESS-
ING CO., INC.; ELIXIR INDUSTRIES; ELKHART
BRASS MANUFACTURING CO. INC.; ELKHART
GENERAL HOSPITAL; GASKA TAPE INC.; HARTSON-
KENNEDY CABINET TOP CO. INC.; HENKELS &
McCOY, INC.; INDIANA MICHIGAN POWER COM-
PANY; KAMPCO STEEL PRODUCTS, INC.; LITHO-
TONE, INC.; PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION; STEINWAY MUSICAL
INSTRUMENTS, INC; TRIMAS CORPORATION;
TRUTH PUBLISHING COMPANY, INC.; UNIVERSAL
FOREST PRODUCTS EASTERN DIVISION, INC.;
WALERKO TOOL & ENGINEERING CORPORATION;
WELLS CARGO, INC.; and WYETH, INC.;

Defendants.

Civil Action No. 2:07-cv-304

STATE OF INDIANA'S FIRST AMENDED COMPLAINT IN INTERVENTION

The State of Indiana, by the authority of its Attorney General and through its undersigned attorney, files this Complaint in Intervention on behalf of the Commissioner of the Indiana Department of Environmental Management ("IDEM")

NATURE OF ACTION

1. On September 7, 2007, the United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed this action seeking injunctive relief and recovery of costs under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation and Liability Act as amended, 42 U.S.C. §§ 9606(a) and 9607. The United States' complaint seeks injunctive relief requiring defendants to implement U.S. EPA's selected remedy at the Himco Dump Superfund Site (the "Site") in Elkhart, Indiana, as well as recovery of unreimbursed costs incurred by the United States in connection with the Site.

2. The State of Indiana has a parallel claim pursuant to CERCLA Section 107, 42 U.S.C. § 9607 and Ind. Code §§ 13-25-4-8 and 13-25-4-10, for recovery of costs the State has incurred or will incur in connection with the Site. The State was not a party to nor was its cost recovery claim included in the original complaint.

3. On September 7, 2007, the United States lodged a Consent Decree with the Court which purports to settle the pending action. The proposed Consent Decree is subject to public notice and comment before the United States moves for entry by the Court. The State of Indiana has joined in the proposed settlement and seeks now to intervene as a plaintiff in the underlying action so as to be included formally in the proposed settlement of its cost recovery

claim.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and over the Defendants, pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

5. Venue is proper in this District under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened and actual releases of hazardous substances occurred at the Site, which is located within this judicial district.

THE DEFENDANTS

6. Defendant Bayer Healthcare, Inc. ("Bayer Healthcare") is a wholly owned subsidiary of the Bayer Corporation, and is a successor in interest to Miles Laboratories, Inc. which, at all relevant times, operated pharmaceutical and other manufacturing facilities in the Elkhart area. Bayer Healthcare is currently the owner of a portion of the Site. Bayer Healthcare's predecessor Miles Laboratories, by contract, agreement, or otherwise, arranged for disposal or treatment at the Site of hazardous substances that it owned or possessed, within the meaning of Sections 107 (a)(1) and (3) of CERCLA, 42 U.S.C. § 9607(a)(1) and (3).

7. Defendant Himco Waste-Away Service Inc. ("HIMCO"), an Indiana corporation, was the operator of the Site during the relevant time period, within the meaning of Section 106(a)(2), 42 U.S.C. § 9606(a)(1).

8. Each of the following Defendants was a generator which arranged for disposal of hazardous substances at the Site within the meaning of Section 107(a)(3) of CERCLA, 42

U.S.C. § 9603(a)(3). Each of these entities (or successors to the liability of the original generators) is listed below with a parenthetical reference to the State in which it is incorporated:

AACOA, Inc. (Indiana), formerly Architectural Anodizing Corporation of America; Accra-Pac, Inc. (Indiana), d/b/a KIK Indiana; American Gage & Machine Company (Illinois), as successor to Labour Pump Company and Katy Industries, Inc.; American Premium Underwriters Inc. (Pennsylvania), formerly Penn central Corporation; Beazer East. (Delaware); Bridgestone Firestone North American Tire (Delaware) on behalf of Firestone Foam Products and Foamex Products, Inc.; Champion Home Builders, Inc. (Michigan); Coleman Cable, Inc. (Delaware), successor to Riblet Products Corp.; Consolidated Rail Corporation and Conrail, Inc. (Pennsylvania); Crosbie Foundry Company, Inc. (Indiana); CTS Corporation (Indiana); Dura Automotive Systems of Indiana, Inc. (Indiana); E.K. Blessing Co., Inc. (Indiana); Elixir Industries (California); Elkhart Brass Manufacturing Company, Inc. (Indiana); Elkhart General Hospital, Inc. (Indiana); Gaska Tape, Inc. (Indiana); Hartson-Kennedy Cabinet Top Co., Inc. (Indiana); Henkels & McCoy, Inc. (Pennsylvania); KampCo Steel Products, Inc. (Indiana); Lithotone, Inc. (Indiana); Steinway Musical Instruments, Inc. (Delaware), on behalf of C.G. Conn, Ltd., Selmer Industries, Inc., Vincent Bach; Trimas Corporation and subsidiaries, including Reese Products (Delaware); Truth Publishing Company, Inc. (Indiana); Universal Forest Products Eastern Division, Inc. (Michigan); Walerko Tool and Engineering Corporation (Indiana); Wells Cargo, Inc. (Indiana); Wyeth Inc. (Delaware), formerly Whiteball Laboratories. Indiana Michigan Power Company, an Indiana corporation, is an owner of a portion of the Site and is also a generator within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

9. Each named Defendant is a "person" (or is a successor to the liability of a "person") within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).

BACKGROUND

10. Between 1960 and 1976, the HIMCO Dump Superfund Site, which covers approximately sixty (60) acres of low lying marshland in Elkhart, Indiana, was operated as a landfill that accepted medical, pharmaceutical, and industrial waste. The landfill was operated by Himco Waste-Away Service, Inc. The Site was owned in part by Miles Laboratories, Inc. (now Bayer), which also generated waste disposed of at the Site.

11. In 1974, the Indiana State Board of Health ("ISBH"), in response to complaints from neighboring residents regarding discoloration and foaming of their drinking water, began investigating disposal practices and potential contamination at the Site. ISBH ordered closure of the Site in 1976.

12. Subsequent investigations by U.S. EPA revealed that groundwater down-gradient from the Site contaminated a number of metals such as aluminum, arsenic, barium, chromium, cadmium, lead, nickel, and mercury, as well as organic compounds such as acetone, benzene, phenol, and freon, among others. Additional groundwater testing by EPA in 1990 revealed high levels of sodium and manganese.

13. In 1989, U.S. EPA began a remedial investigation/feasibility study ("RI/FS") at the Site.

14. In 1990, the Site was placed on the National Priority List, ("NPL"), at 40 C.F.R. Part 300, Appendix B, based on the relative risk of danger to public health or welfare or the environment at the Site.

15. In September 1993, EPA issued a record of decision ("ROD") for the Site, which set forth the remedial action determined to be necessary to eliminate or minimize the migration of contaminants in the groundwater and to reduce the risks associated with exposure to contaminated materials.

16. In December 2004, U.S. EPA issued a ROD Amendment, which replaced and/or modified the original composite cap remedy and established contingencies for further groundwater containment and remediation. The ROD Amendment also provided for removal and disposal of contaminated material in the construction debris area and installation of an active landfill gas collection and treatment system at the Site.

GENERAL ALLEGATIONS

17. The Himco Site is a "facility" within the meaning of Section 101 (9) of CERCLA, 42 U.S.C. § 9601 (9).

18. "Hazardous substances" within the meaning of Section 101 (14) of CERCLA, 42 U.S.C. § 9601 (14), and 40 C.F.R. part 300.1 *et seq.* were spilled, leaked discharged or otherwise disposed of at the Site.

19. The migration of hazardous substances into the groundwater in and around the Site and the presence of hazardous substances at the Site constitute "releases" and threatened releases of hazardous substances with the meaning of Section 101 (22) of CERCLA, 42 U.S.C. § 9601 (22).

20. To date, the State has funded certain response actions related to the Site, including costs of investigation and enforcement activity, and provision of bottled water to affected residents, in excess of \$28,000. These response costs were incurred in a manner not

inconsistent with the National Contingency Plan, at 40 C.F.R. Part 300.

CLAIM FOR RELIEF

21. Paragraphs 1-20 are realleged and incorporated herein by reference.

22. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner or operator of a vessel or a facility,

* * * * *

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility ... owned or operated by another party or entity and containing such hazardous substances, and

Shall be liable for –

(A) all costs of removal or remedial action incurred by ...a State
...not inconsistent with the national contingency plan....

Additionally, pursuant to Indiana Code § 13-25-4-8, “a person that is liable under Section 107(a) of CERCLA (42 U.S.C. 9607(a))... is liable, in the same manner and to the same extent, to the state...”

23. Pursuant to Indiana Code § 13-25-4-10, “The commissioner [of the Indiana Department of Environmental Management] may proceed in the appropriate court to recover costs and damages for which a responsible person is liable to the state under... Section 107 of CERCLA (42 U.S.C. 9607)” and under Indiana Code § 13-25-4-8.

24. The State has incurred and will continue to incur costs of response actions not inconsistent with the National Contingency Plan to respond to the release or threatened release of

hazardous substances at and from the Site, within the meaning of Section 101 (23), (24), and (25) of CERCLA, 42 U.S.C. § 9601 (23), (24), and (25).

25. Defendants are liable to the State for all response costs incurred in the past or to be incurred in the future by the State with respect to the Site, plus interest on the responses costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and Indiana Code §§ 13-25-4-8 and 13-25-4-10.

PRAYER FOR RELIEF

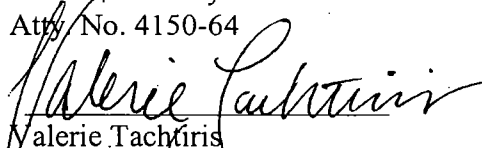
WHEREFORE, Plaintiff, the State of Indiana, respectfully requests that this Court enter a judgment against Defendants as follows:

1. Order the Defendants to pay all response costs incurred by the State of Indiana in response to the release and threat of release of hazardous substances at the Himco Dump Site, plus interest on those response costs;
2. Enter a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against the Defendants on liability that will be binding on any subsequent action to recover further response costs;
3. Award Plaintiff its costs and disbursements in this action; and
4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted:

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:


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Deputy Attorney General
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